

§ 55A-11-03. Action on plan.

(a) Unless this Chapter, the articles of incorporation, bylaws, or the board of directors or members (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, a plan of merger to be adopted shall be approved for each constituent corporation:

- (1) By the board;
- (2) By the members entitled to vote thereon, if any, by two-thirds of the votes cast or a majority of the votes entitled to be cast on the plan of merger, whichever is less; and
- (3) In writing by any person or persons whose approval is required by a provision of the articles of incorporation authorized by G.S. 55A-10-30 for an amendment to the articles of incorporation or bylaws.

(b) If the corporation does not have members entitled to vote thereon, the merger shall be approved by a majority of the directors then in office. The corporation shall provide at least five days' written notice of any directors' meeting at which the approval will be considered. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(c) The board may condition its approval of the proposed merger, and the members entitled to vote thereon may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have the plan approved by the members entitled to vote thereon at a membership meeting, the corporation shall give notice of the membership meeting to those members in accordance with G.S. 55A-7-05. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles of incorporation and bylaws that will be in effect immediately after the merger takes effect.

(e) If the board seeks to have the plan approved by the members entitled to vote thereon by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles of incorporation and bylaws that will be in effect immediately after the merger takes effect.

(f) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under G.S. 55A-10-04 or G.S. 55A-10-22. The plan is approved by a class of members by two-thirds of the votes cast by the class or a majority of the votes entitled to be cast by the class, whichever is less.

(g) After a merger is adopted but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned, subject to any contractual rights, as provided in the plan of merger, or, if there is no such provision, as determined by the board of directors without further action by the members or other persons who approved the plan of merger. (1955, c. 1230; 1993, c. 398, s. 1; 2005-268, s. 39.)